

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
TERMAIN KIRBY,

Plaintiff,

-against-

NYC/DOC/VCBC WARDEN CARTER;
NYC/DOC/VCBC CAPTAIN GUERRA; 3-AA
HOUSING UNIT CAPTAIN; NYC/DOC/VCBC
CAPTAIN JERMAINE SLACK INTAKE;
NYC/DOC/VCBC INTAKE CAPTAIN CARLO
CIQUEROS; SUPERVISING CAPTAIN;
NYC/DOC/VCBC CAPTAIN HORTON,

Defendants.

ANALISA TORRES, District Judge:

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21 Civ. 9056 (AT) (KHP)

ORDER

On November 1, 2021, the Honorable Laura Taylor Swain severed the claims of all plaintiffs in *Michael J. Lee et al. v. Warden Carter et al.*, No. 21 Civ. 8629. ECF No. 1. Accordingly, Plaintiff Termain Kirby's claims were severed and a new civil action, the above-captioned case, was opened. On December 3, 2021, Plaintiff's case was assigned to the Honorable Alison J. Nathan. Dkt. Entry 12/3/2021. On February 10, 2022, Plaintiff filed an amended complaint alleging claims under 42 U.S.C. § 1983. ECF No. 18. On April 11, 2022, Plaintiff's case was reassigned to the undersigned. Dkt. Entry 4/11/2022. On May 2, 2022, Defendants filed a motion to dismiss the amended complaint. ECF No. 24. On May 4, 2022, the Court referred the motion to the Honorable Katharine H. Parker for a Report and Recommendation (the "R&R"). ECF No. 27.

On December 9, 2022, Judge Parker issued an R&R recommending that Defendants' motion be granted, and that Plaintiff's claims be dismissed without prejudice. ECF No. 34. Having received no objections to the R&R, the Court reviewed the R&R for clear error and found none. *Oquendo v. Colvin*, No. 12 Civ. 4527, 2014 WL 4160222, at *2 (S.D.N.Y. Aug. 19, 2014).

The Court, therefore, ADOPTS the R&R in its entirety. Accordingly, Defendants' motion to dismiss is GRANTED. Plaintiffs' claims are DISMISSED without prejudice.

The Clerk of Court is directed to terminate the motion at ECF No. 24 and mail a copy of this order to Plaintiff *pro se*.

SO ORDERED.

Dated: December 28, 2022
New York, New York



ANALISA TORRES
United States District Judge